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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,432	06/13/2006	Nicolas Burdin	06-439	6546

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EXAMINER	
YOUNG, SHAWQUIA	

ART UNIT	PAPER NUMBER
1626	

MAIL DATE	DELIVERY MODE
04/14/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/596,432	Applicant(s) BURDIN ET AL.	
	Examiner SHAWQUIA YOUNG	Art Unit 1626	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,3 and 5*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
The declaration filed by Applicants on August 5, 2009 does not provide support that an immunostimulant composition comprising 4-amino-2-ethoxy-alpha, alpha-dimethyl-1H-imidazo[4,5c]quinoline-1-ethanol (R-848) and an agonist of the Toll-like 4 receptor produces an unexpected synergistic effect when the two agents are combined and further that it would have been unobvious for one of ordinary skill in the art to combine the two agents in a composition which are known in the art individually (ER804057 and imidazoquinolines) to possess immunostimulatory properties. Applicants argue that none of the references cited in the 103 rejection does not teach that different TLR agonists can be combined in a single immunostimulant composition or that a combination of different TLR agonists would result in an enhanced potentiation of the Th1 type response or that the combination of 4-amino-2-ethoxy-alpha, alpha-dimethyl-1H-imidazo[4,5c]quinoline-1-ethanol with a TLR 4 agonist would provide an unexpectedly superior immunostimulant response. The Examiner wants to emphasize as stated in the 103 rejection that it was well established that it is obvious to combine individual compositions taught by the prior art to be useful for the same purpose to form a third composition that is used for the very same person (In re Kerkoven, 626 F. 2d 846, 205 USPQ 1069). However, the Examiner wants to point out that the results of the H-8820 in combination of ER804057 in table II of the declaration also shows a synergistic effect. The INF-gamma assay shows that the two compounds together produce a stronger effect together than they do individually. Also the IL- assay shows an improved effect when the two agents are combined together than H-8820 individually. The Examiner also wants to point out that R-848 is a more active compound than H-8820 and therefore the Applicants results in the specification may seem more superior than the results in the declaration but both combinations have shown an improved effect and therefore Applicants have not shown that an immunostiimulant composition comprising R-848 and a Toll-like 4 receptor is unobvious over the references Hawkins, et al. and Gerster, et al in view of Janssens, et al. The 103 rejection over claims 1, 3 and 5 have been maintained..
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s).

/Rebecca L Anderson/
Primary Examiner, Art Unit 1626